No. 85 - 1897

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS,

Petitioners,

vs.

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

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QUESTION PRESENTED

Whether under the Due Process Clause of the Fourteenth Amendment, a county can take real property worth more than needed to satisfy a tax lien without affording the owner a procedure to recover the excess value.

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No.

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COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners herein pray that a writ of certiorari issue to review the final order and judgment of the New York State Court of Appeals in the above-entitled case dated February 13, 1986 and entered on February 20, 1986.

OPINIONS BELOW

The opinion and final order of the New York State Court of Appeals which is sought to be reviewed has been reported at 67 N.Y. 2d 52, and is reproduced in the Appendix hereto at page 1a. The prior order and decision of the Supreme Court of the State of New York, County of Sullivan has not been reported and is reproduced in the Appendix hereto at page 11a-19a.

JURISDICTION

The final order and judgment of the New York State Court of Appeals dated February 13, 1986 was entered on February 20, 1986. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) to review the final order and judgment entered by the highest state court in New York. The matter involves the validity under the United States Constitution of a state statute and a claim by petitioners of a right under 42 U.S.C. § 1983.

PROVISIONS OF THE CONSTITUTION AND STATUTES INVOLVED

This case involves the first section of the Fourteenth

Amendment to the Constitution of the United States which provides in relevant part as follows:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . .

The relevant provisions of the New York statute, Real Property Tax Law, Section 1008(3) provides as follows:

> Notwithstanding any other provision of law the Board of Supervisors of any County may by resolution authorize and direct the County Treasurer to purchase lands at the tax sale, without competitive bidding, for the gross amount due thereon.

The relevant provisions of the New York statute, Real Property Tax Law, Section 1018 provides as follows:

> 1. If any parcel of real property sold for taxes is not redeemed within the time limited as provided in section ten hundred ten of this chapter, upon application in writing the county treasurer shall execute to the purchaser a conveyance of the real property sold, the description of which shall include a specific statement of the title or interest thereby conveyed, so far as appears on the record in his office.
>
> * * *
>
> 4. In the event the county is the purchaser,

> the conveyance shall run to and name the county as grantee and the title thus acquired by the county may be disposed of, subject to the provisions of section ten hundred nineteen of this chapter, at such times and upon such terms as shall be determined by a majority of the board of supervisors at any meeting thereof.

STATEMENT OF THE CASE

The federal question sought to be reviewed was first raised in the complaint (Complaint ¶¶ 93-96, Appendix 36a-37a). This action was brought by petitioners to challenge the provisions of the New York Real Property Tax Law as unconstitutional and to seek damages under 42 U.S.C. § 1983 against each of the counties. In New York a real property tax lien is enforced by the sale of a tax sale certificate. Under the challenged procedures. the county purchases all of the tax sale certificates "without competitive bidding, for the gross amount due thereon" (R.P.T.L. § 1008). If the owner does not redeem the property within the applicable statutory period, the county receives a deed to the property from the county treasurer (R.P.T.L. § 1018).

The facts of this case were not disputed. Petitioners were unable to pay their real property taxes. The tax sale certificates were purchased by the counties for the gross amount of the real property taxes owed. When the property was not redeemed by petitioners, the County took title to, and subsequently sold all but two of the parcels in question and kept the entire value of the property. The fair market value of each of the properties at the time of its taking exceeded the amount of the taxes owed. For example, Petitioner MacKechnie owed $2,962.12 but the County took property worth more than $20,300; Petitioner Maleszka owed $5,141.02 but the County took property worth more than $29,000. There was no procedure to determine the value

of the property at the time of its taking nor was there a procedure for the owner to recover the amount in excess of that needed to satisfy the tax lien. The trial court, on cross-motions of the parties, held that there was no violation of the Due Process Clause. Accordingly, the court dismissed the complaint for failure to state a cause of action. Since only constitutional questions were raised, a direct appeal to the New York Court of Appeals followed. The New York Court of Appeals held that once taxpayers are provided with notice and an opportunity to be heard on the original tax assessment of the property, they have received all the process that is due. Since, a taxpayer is given a three year period of redemption during which he has the opportunity to either pay the taxes and penalties due or sell the property subject to the lien and retain the surplus, there is no deprivation of due process in the county's retention of any surplus. Accordingly, the court affirmed the decision of the trial court.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED BECAUSE THE STATE STATUTE DEPRIVES PETITIONERS OF PROPERTY WITHOUT DUE PROCESS AND ALSO TO CLARIFY CONFLICTING DECISIONS OF THIS COURT.

The New York Court of Appeals, relying on *Balthazar v. Mari Ltd.*, 301 F. Supp. 103, *aff'd*, 396 U.S. 114, held that as long as a taxpayer had time to redeem the property after the tax sale, there was no constitutional need for any procedure to return the excess value to the taxpayer. This Court, however, has on two other occasions held that such procedures to return excess funds are constitutionally mandated.

In *United States v. Lawton*, 110 U.S. 146, real property was sold by the United States for non-payment of $170.50 in taxes. The United States bought in at the sale for $1,100. In holding

that a statute must be interpreted to give the former owner of the land the excess value, this Court stated at page 150:

> To withhold the surplus from the owner would be to violate the fifth amendment to the constitution, and deprive him of his property without due process of law or take his property for public use without just compensation.

This Court was faced with a similar question in *Nelson v. City of New York*, 352 U.S. 103. The Court in upholding the statute found that the New York City statute under review did in fact provide a procedure for returning to the owner the amount in excess of that needed to satisfy the tax lien. The Court specifically stated that (352 U.S. at 110):

> [W]e do not have here a statute which absolutely precludes an owner from obtaining the surplus proceeds of a judicial sale. In New York v. Chapman Docks Co. 1 App Div2d 895, 149 NYS2d 679, an owner filed a timely answer in a foreclosure proceeding, asserting his property had a value substantially exceeding the tax due. The Appellate Division construed [Sec] D17-12.0 of the statute to mean that upon proof of this allegation a separate sale should be directed so that the owner might receive the surplus. What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recover any surplus, retain the property or the entire proceeds of its sale. We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings.

The *Balthazar* holding also conflicts with this Court's recent decision dealing with a real property tax statute. In *Mennonite Board of Missions v. Adams,* 462 U.S. 791 at 799, the Court stated "[m]ore importantly, a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligations". The District Court in *Balthazar,* on the other hand, had upheld a tax sale statute even though there were no procedures to return the excess value to the owner. The District Court held that the Constitution required nothing more than a period within which the taxpayer could redeem or sell the property.

Unlike the statute in *Nelson*, this Court is presented here with a statutory scheme which absolutely precludes an owner from obtaining the excess value. Petitioners have each been unconstitutionally deprived of substantial property rights which merit review by this Court.

Furthermore, this case will resolve the conflict between *Nelson* and *Balthazar* with regard to a taxpayer's right to a procedure for the return of the excess value of property taken by a county at a tax sale. It would also resolve the conflict between *Balthazar* and *Mennonite* on the adequacy of an individual's self-help remedy as a substitute for a state's constitutional obligation.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted.

EDWARD JOEL MEYER
MEYER, DIESENHOUSE,
FEINSON & SHAPIRO
Attorneys for Petitioner

ROBERT M. FEINSON
Of Counsel

APPENDIX A—OPINION OF COURT OF APPEALS

Remittitur

COURT OF APPEALS
STATE OF NEW YORK
The Hon. Sol Wachtler, Chief Judge, Presiding

SupC No. 37

Wallace MacKechnie, et al.,

Appellants,

v.

County of Sullivan, et al.,

Respondents.

The appellant(s) in the above entitled appeal appeared by Meyer, Diesenhouse, Feinson and Shapiro, Esqs.;
the respondent(s) appeared by Hon. Robert Abrams, Attorney General of the State of New York; James G. Sweeney, Esq., County Attorney, Orange County; William C. Rosen, Esq., County Attorney, Sullivan County; Stephen Wing, Esq., Dutchess County Attorney; and Robert A. Smith, Esq., Rensselaer County Attorney.

The Court, after due deliberation, orders and adjudges that the judgment is affirmed, with costs. Opinion by Judge Titone, Chief Judge Wachtler and Judges Meyer, Simons, Kaye, Alexander and Hancock concur.

The Court further orders that the papers required to be filed

Appendix A

and this record of the proceedings in this Court be remitted to the Supreme Court, Sullivan County *there to be proceeded upon according to law.*

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

s/ Donald M. Sheraw
Donald M. Sheraw,
Clerk of the Court

Court of Appeals, Clerk's Office, Albany, February 13, 1986.

Appendix A

STATE OF NEW YORK
COURT OF APPEALS

SupC No. 24

Donald Sheehan et al.,

Appellants,

v.

County of Suffolk, State of New York,

Respondent.

SupC No. 37

Wallace MacKechnie, et al.,

Appellants,

v.

County of Sullivan, et al.,

Respondents.

OPINION

This opinion is uncorrected and subject to revision before publication in the New York Reports.

(24) Irwin Popkin, Shirley, for appellant. Martin Bradley Ashare, Suffolk County Attorney (John C. Bivona of counsel) for

respondent. Robert Abrams, Attorney General (Robert Hermann & William J. Kogan of counsel) intervenor prose.

(37) Edward J. Meyer, Middletown, for appellant. James G. Sweeney, Orange County Attorney, for respondent. Robert Abrams, Attorney General, Michael S. Buskus, Robert Hermann, & Peter H. Schiff of counsel) intervenor prose.

TITONE, J.:

The question presented is whether a real property tax scheme which requires notice to a taxpayer of taxes due, notice of delinquent taxes, notice of a tax lien sale, a tax sale without competitive bidding, a redemption period and notice of the impending expiration of the redemption period before the resale of the property at public auction and retention of any surplus by the county, deprives a taxpayer of property without due process of law or constitutes a taking without just compensation. We hold that it does not.

I

A

In *Sheehan v County of Suffolk*, the named plaintiffs are former resident owners of real property in Suffolk County. It is undisputed that both plaintiffs failed to pay real property taxes due. Pursuant to Suffolk County Tax Act, Section 26(2), the county mailed the following notice to each plaintiff:

> "The records of this office indicate that you have neglected to pay the taxes levied against real property assessed to you for the current tax year.

Appendix A

> You are hereby notified that pursuant to the law the tax rolls have been returned to the county treasurer and that unless the unpaid taxes, plus interest and penalties, are paid prior to the publication of the tax sale lists which will occur soon after September 1st next, the tax lien against your real property will be advertised for sale in the following newspapers designated to publish tax sale lists this year to wit: [names of newspapers] and such tax lien will be sold pursuant to such advertisement. For further information you must communicate with the county treasurer at Riverhead, New York, giving him your name and address and a brief description of your real property including map and lot number."

Subsequently, Suffolk County purchased the tax liens at a sale at which it was the only bidder allowed (Suffolk County Legislature Resolution No. 829-1971).

At least three months prior to the end of the thirty-six month redemption period, a notice of unredeemed real estate was both published (SCTA § 52) and mailed to the plaintiffs (Real Property Tax Law, § 1014). After the redemption period expired, the County automatically obtained deeds to the properties from the County Treasurer. Following the conveyance of the deeds, the taxpayers were allowed nine additional months within which to redeem the properties. Neither taxpayer made any timely effort to redeem. Several years later, the County sold the properties at public auctions and retained the substantial differences between the lien amounts and the sale prices.

Plaintiffs then commenced this action for a determination

of claims to the real property and for a judgment declaring the County's tax scheme unconstitutional. Special Term dismissed the complaint upon cross-motions for summary judgment. Plaintiffs appeal directly to this Court, pursuant to CPLR 5601[b][2], challenging only the constitutionality of the statutory scheme, having waived all other non-constitutional claims (Cohen & Karger, Powers of the New York Court of Appeals, § 58, at 262-263).

B

In *MacKechnie v County of Sullivan* each of the named plaintiffs failed to pay real property taxes after each received notice by mail of the tax obligation (Real Property Tax Law, § 922). Proper advance notice of an impending tax sale was given (Real Property Tax Law § 1002). Pursuant to Real Property Tax Law Section 1008(3) and resolutions passed by the defendant counties, the counties purchased the properties at tax sales without competitive bidding.

The plaintiffs were permitted to redeem their properties during a three year period (Real Property Tax Law, §§ 1010, 1022 and 1024). Within six months of the expiration of the redemption period, each plaintiff received notice by mail of the upcoming expiration. None of the plaintiffs redeemed. The counties took deeds to the properties pursuant to Real Property Tax Law, Section 1018.

The counties sold most of the properties at public auctions and retained the proceeds in excess of the taxes and penalties due. Orange County still retains the deed to one property upon which it refuses to allow redemption.

Appendix A

Plaintiffs action for a judgment declaring the statutory tax scheme unconstitutional, for damages and for injunctive relief was dismissed by Special Term for failure to state a cause of action. They have taken a direct appeal from the judgment to this Court (CPLR 5601[b][2]).

II

Plaintiffs urge that the counties' failure to inform them that the tax liens would not be sold at a competitive bidding and that they would not receive any surplus from the ultimate public auctions of the properties violated the due process clauses of the State and Federal constitutions. They also contend that permitting the counties to purchase tax liens without competitive bidding and then ultimately to sell the properties without turning over the surplus to the owners amounts to a taking without just compensation. We disagree, and affirm both judgments.

Analysis should begin with the well settled proposition that an owner of property is charged with knowledge of statutory provisions affecting the control or disposition of his or her property (*Texaco, Inc. v Short*, 454 US 516, 531; *Congregation Yetev Lev D'Satmar, Inc. v County of Sullivan*, 59 NY2d 418, 423). So viewed, it was the plaintiffs' failure to inform themselves of the relevant competitive bidding and forfeiture statutes that worked the arguably harsh consequences, not the statutory provisions (*United States v Locke*, ____ US ____, 105 S Ct 1785, 1799).

Due process does not require that every taxpayer be advised of the possible consequences attaching to a default in payment (*United States v Locke, supra; Texaco, Inc. v Short, supra; North Laramie Land Co. v Hoffman*, 268 US 276; *Congregation Yetev Lev D'Satmar v County of Sullivan, supra; Lily Dale Assembly,*

Inc. v County of Chatauqua, 52 NY2d 943, affg 72 AD2d 950, cert denied 454 US 823). Once taxpayers are provided with notice and an opportunity to be heard on the adjudicative facts concerning the valuation of properties subject to tax, as was done here, they have received all the process that is due (*Mennonite Board of Missions v Adams*, 462 US 791, 798-800; *Mullane v Central Hanover Bank & Trust Co.*, 339 US 306; *Botens v Aronauer*, 32 NY2d 243, *appeal dismissed*, 414 US 1059; 3 Davis, Administrative Law Treatise, § 15:9 [2d ed 1980]). At this juncture, summary remedies for the collection of taxes may be invoked (*Botens v Aronauer, supra*).

There is no unfairness, much less a deprivation of due process, in the County's retention of any surplus. The taxpayers in each of the statutory schemes under review are given a three year period of redemption. During this period, plaintiffs had the opportunity to either pay the taxes and penalties due or sell the property subject to the lien and retain the surplus. This redemption period affords the taxpayer an opportunity to avoid a full forfeiture (*see, Chapman v Zobelein*, 237 US 135). Statutes which allow a state to retain the excess collected upon the public sale of property have been sustained where they provide for a lengthy redemption period (*Chapman v Zobelein, supra; Turner v New York*, 168 US 90, 94, *supra; Balthazar v Mari Ltd.*, 301 F Supp 103, *affd* 396 US 114).

A three year redemption period, as set forth in the challenged statutes, gives sufficient opportunity for a taxpayer to reclaim the property. It is not unjust for a legislative body to declare that once a taxpayer has abandoned rights in property after such a period has expired, the taxing authority may take a deed in fee. At that point, the former owner can no longer claim any just compensation upon its resale (*Texaco, Inc. v Short*, 454 US 516,

530, *supra*). Full forfeiture has already occurred upon the taxpayer's failure to redeem the property before it has been resold.

There is no constitutional prohibition against such a full forfeiture (*Balthazar v Mari Ltd.*, 301 F Supp 103, *affd* 396 US 114; *see also Nelson v City of New York*, 352 US 103; *Chapman v Zobelein, supra*). *United States v Lawton* (110 US 146) did not hold to the contrary. In *Lawton,* the federal statute under which the property was sold required return of any surplus. Obviously, in the face of such a statute, payment of any excess to the former owner was required and *Nelson v City of New York* (*supra,* at 109-110) expressly distinguished *Lawton* on that basis.

Finally, there is no constitutional requirement that tax liens be sold only through competitive bidding (*Saranac Land & Timber Co. v Comptroller of N. Y.*, 177 US 318, 326-328). Finding abuses engaged in by land speculators, the State Legislature has permitted localities to restrict tax lien sales to governmental bodies (*see, Matter of Elinor Homes Co. v St. Lawrence*, ____ AD2d ____, 494 NYS2d 889). The localities here exercised that option, and we cannot say that in doing so they have engaged in impermissible objectives or have deprived the plaintiffs of any constitutionally protected rights.

Accordingly, the judgments of the Supreme Court in *Sheehan v County of Suffolk and MacKechnie v County of Sullivan,* dismissing plaintiffs' actions should be affirmed, with costs.

* * * * * * * *

In each case:

Judgment affirmed, with costs. Opinion by Judge Titone. Chief

Appendix A

Judge Wachtler and Judges Meyer, Simons, Kaye, Alexander and Hancock concur.

Decided February 13, 1986

APPENDIX B—ORDER OF SUPREME COURT OF THE STATE OF NEW YORK

At a Special Term of the Supreme Court held in and for the County of Sullivan at the Chambers thereof at the Ulster County Court Courthouse, Kingston, New York on the 14th day of December, 1984.

PRESENT:

VINCENT G. BRADLEY,
Justice, Supreme Court

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY AND LEANDA BURGESS individually, and in behalf of all other persons similarly situated

Plaintiffs,

-against-

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, As County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME; BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York.

Defendants.

Appendix B

The defendant, COUNTY OF ORANGE and JOHN S. KELLER, having moved this Court for an order pursuant to Section 3211 (a) (7) and all defendants, except COUNTY OF BROOME and BRIAN LIND having joined in said motion, said defendants, COUNTY OF BROOME and BRIAN LIND having been released by prior stipulation and order of this Court; and plaintiffs having cross moved for partial summary judgment pursuant to Section 3212 CPLR seeking a declaration that certain sections of the Real Property Tax Law of the State of New York be declared unconstitutional and enjoining their enforcement; and the defendants STATE OF NEW YORK having moved separately for a dismissal of the complaint herein pursuant to Section 3211 (a) (7) of the CPLR or in the alternative for summary judgment pursuant to Section 3211 (c) CPLR, and

NOW upon reading and filing the verified amended complaint; the verified answers to said amended complaint interposed by defendants COUNTY OF RENSSELAER and WILLIAM ST. JOHN, the COUNTY OF ORANGE and JOHN S. KELLER; the COUNTY OF SULLIVAN and DANIEL L. BRIGGS; the COUNTY OF DUTCHESS and M. PHILIP AMODEO; the Notice of Motion of defendants ORANGE COUNTY and JOHN S. KELLER to dismiss the complaint herein dated November 1, 1984 together with the supporting affidavits of James G. Sweeney sworn to on November 1, 1984, the affidavit of Robert A. Smith, sworn to on November 5, 1984, the affidavit of Adina C. Gilbert, sworn to on November 9, 1984, the affidavits of Alfred M. Gerstman, sworn to on December 6, 1984 and on January 22, 1985; all in support of said motion; the Notice of Motion of the defendants, STATE OF NEW YORK to dismiss the complaint or in the alternative, for summary judgment dated November 19, 1984 and the Affirmation Jerold S. Slate, Assistant Attorney General, dated November 19, 1984 in support thereof;

Appendix B

the Notice of cross-Motion of the plaintiffs for summary judgment dated December 5, 1984, the affidavits of Robert M. Feinson and Wallace Mac Kechnie each sworn to on December 5, 1984 in support thereof and the exhibits annexed thereto; and the Court having heard argument upon said motions and cross-motion and having rendered its memorandum decision dated August 21, 1985,

NOW, upon motion of James G. Sweeney, County Attorney of Orange County, it is ORDERED as follows:

1. That the Amended Complaint herein be and hereby is dismissed for failure to state a cause of action.

2. That the cross-motion of the plaintiffs for summary judgment declaring certain provisions of the Real Property Tax Law of the State of New York unconstitutional and other relief be and hereby is denied.

3. That all other motions made with respect to this action for changes in venue, intervention of other parties and class action certification be and hereby are denied as being moot in light of the foregoing provisions of this Order.

ENTER,

s/ Vincent G. Bradley

VINCENT G. BRADLEY
J.S.C.

Dated: 10/1/85

Appendix B

TO:

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APPENDIX C — DECISION OF SUPREME COURT OF THE STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESKA AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY AND LEANDA BURGESS individually, and on behalf of all other persons similarly situated

Plaintiffs

-against-

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer; County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME; BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

Defendants.

Appendix C

SUPREME COURT, SULLIVAN COUNTY SPECIAL TERM, DECEMBER 14, 1984

JUSTICE VINCENT G. BRADLEY, PRESIDING

(CALENDAR #8, 9, 10, 44, 93, 97)

APPEARANCES:

This is an action brought primarily for a declaratory judgment declaring Real Property Tax Law (RPTL) § 1088(3) and § 1018 unconstitutional as being a violative of the Federal and State Constitution "due process" clauses both substantively and procedurally. The defendant County of Orange has moved to dismiss the complaint pursuant to CPLR 3211(a)(7) for its failure to state a cause of action and the movant is joined by all of the other defendant counties except for the County of Broome, which county has been released from all claims in this lawsuit upon consent of all the parties. The state, through the Attorney General, has also moved to dismiss pursuant to CPLR 3211(a)(7) or, in the alternative, pursuant to CPLR 3211(c) for summary judgment.

The plaintiffs cross move for partial summary judgment and for confirmation of a class status pursuant to CPLR 902. Additionally, there are various motions by the defendants for a change of venue. All matters before this Court were adjourned to chambers at a later date for oral argument. At that time, the parties agreed that if the Court could decide the constitutional issue all other motions could be deferred.

The salient facts concerning defendants' motion to dismiss are undisputed. All of the plaintiffs were owners in fee simple of property in the various counties and subject to a lawful levy

of taxes thereon by the legislative bodies of said counties pursuant to Article 9 of the RPTL. All plaintiffs were unable to pay their property taxes when due and there is no dispute they received notice of their obligation pursuant to § 922 of the RPTL. All plaintiffs were given due notice of the impending tax sale of the subject properties one year after the occurrence of the tax delinquencies under provisions of § 1002 of the RPTL and all the defendant counties adopted a resolution authorizing the purchase of subject land at respective tax sales without competitive bidding for the gross amount of taxes due thereon pursuant to § 1008(3) of the RPTL. The plaintiff taxpayers were entitled to redeem the property within 3 years from their default pursuant to § 1010 § 1022 and § 1024 of the RPTL. Within 6 months of the expiration of the redemption period, each plaintiff was given due notice of that impending event as provided in § 1014 of the RPTL. None of the plaintiffs in question redeemed the subject land within the 3 year redemption period and, at the expiration of said time period, the defendant counties took themselves a deed to the lands giving them title pursuant to RPTL § 1018. Thereafter, each of the defendant counties adopted a procedure pursuant to RPTL § 1018, where they disposed of the unredeemed lands by means of public auction and, except for the Maleska parcel referred to in paragraph 49 of the complaint, which Orange County still owns, the defendant counties did in fact resell said subject land for the sums set forth in the complaint which were in excess of the amount of tax and penalties due on said lands and did retain the entire proceeds of these various resales.

The plaintiffs argue that the sale of tax delinquent properties to the defendant counties for a fraction of their true value, i.e. the amount of delinquency, results in the taking of property without just compensation prohibited by the Fifth Amendment of the United States Constitution and that the fact that the counties

can sell the properties to themselves without competitive bidding violates all notions of substantive or procedural due process under the 14th Amendment of the United States Constitution making RPTL § 1008(3) equally unconstitutional. Additionally, the plaintiffs argue the retention of surplus monies by the defendants realized from the sale of a tax deliquent property acquired by them as a result of a tax sale to them violates substantive due process under the 14th Amendment of the United States Constitution or, at the very least, amounts to unjust enrichment under the common law.

The power to tax is essential to the very existence of government (*McCullogh v. Maryland,* 4 Wheat. 428). The methods of exercising the power of taxation is wholly within the province of the State Legislature (*McCullogh v. Maryland, supra; People v. Mayor,* 4 NY 419, 426). Government has inherent power to subject lands taxed to sale and forfeiture for the failure to pay in order to give effect to the government's lien upon the land for said unpaid taxes and, in establishing the mode of a tax sale, the legislature may rightfully construct a condition of real property divestiture and forfeiture upon the tax sale without violating the Federal Constitution so long as reasonable notice of impending tax sale and the opportunity to redeem from that sale is given (*Leigh v. Green,* 193 U.S. 79; *King v. Mullen,* 171 U.S. 404).

With respect to the due process argument of the plaintiffs, it appears that the only requirements to pass constitutional muster are giving notice of an impending tax sale, a time period within which to redeem the property and notice of the expiration of the redemptive period by means reasonably designed to afford a taxpayer notice of those events (*Nelson v. City of New York,* 352 U.S. 103; *Mennonite Board of Missions v. Adams,* 103 S. Ct. 2706; *Botens v. Aronauer,* 32 NY2d 243; also, see *Chapman*

v. Szobelein, 237 U.S. 135). Thus, it appears that the statutory framework does not violate either the substantive or procedural requirements of the 14th Amendment. Moreover, inasmuch as the power to tax flows from a different source than the powers of eminent domain requiring just compensation for the taking (*People v. Mayor, supra,*) a violation of the Fifth Amendment in this manner is also unfounded. Moreover, as a result of this explicit statutory framework, the argument of unjust enrichment is equally without merit (*City of Auburn v. Mandarelli,* 320 AD2d 22, 31).

Accordingly, the Court finds that the complaint should be dismissed for failure to state a cause of action with respect to the declaratory judgment action. Naturally, any claim for damages pursuant to 42 U.S. 1983 which allegedly flowed from the plaintiffs' theory in the declaratory judgment cause of action must likewise be dismissed. The attorney for the movant Orange County shall submit a single order consistent herewith on notice to all parties.

Dated: Kingston, New York
August 21, 1985

All papers to attorney for County of Orange upon execution of the order entered hereon.

APPENDIX D — SUMMONS AND AMENDED COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

Index No.

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY AND LEANDA BURGESS individually, and in behalf of all other persons similarly situated

Plaintiffs,

-against-

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, As County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME; BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York.

Defendants.

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SUMMONS — CLASS ACTION

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the amended complaint in this action and to serve a copy of your answer on the Plaintiffs' Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the amended complaint.

Plaintiff designates Sullivan County as place of trial.

The basis of the venue is some of the defendants are in said County and some of the land at issue is located in said county.

Dated, September 2, 1984.
Middletown, New York

SHAPIRO, MEYER, FEINSON,
DIESENHOUSE, & BLOOM
Attorneys for Plaintiffs
Office and Post Office Address
Dolsontown Road, P.O. Box 2106
Middletown, New York 10940
(914) 343-0839

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

Index No.

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY AND LEANDA BURGESS individually, and in behalf of all other persons similarly situated

Plaintiffs,

-against-

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, As County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME; BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York.

Defendants.

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AMENDED COMPLAINT — CLASS ACTION

Plaintiffs by their attorneys, SHAPIRO, MEYER, FEINSON, DIESENHOUSE & BLOOM, complaining of the Defendants allege as follows:

I. PARTIES

1. Plaintiff Wallace Mac Kechnie is a resident of Glen Spey, Sullivan County, New York. He was the owner of real property located in Sullivan County, New York, which was sold by the County of Sullivan as property previously acquired by it at tax sale.

2. Plaintiff Maria Monoki Stidolph resides in Forest Hills, New York and Plaintiff Catherine Monoki Dileilla, resides in Rochester, New York. They were the owners of real property located in Sullivan County, New York which was sold by the County of Sullivan as property previously acquired by it at tax sale.

3. Plaintiff George H. Williams is a resident of Cuddebackville, Orange County, New York. He was the owner of real property located in Orange County, New York, which was sold by the County of Orange as property previously acquired by it at tax sale.

4. Plaintiff Chester Maleszka is a resident of Hasting-on-Hudson, Westchester County, New York. He was the owner of real property located in Orange County, New York, which was sold by the County of Orange as property previously acquired by it at tax sale.

5. Plaintiffs Amy and Charles Jones are residents of Middletown, Orange County, New York. They were owners of certain real property located in Orange County, New York, which was sold by the County of Orange as property previously acquired by it at tax sale.

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6. Plaintiffs Henry W. Brill and Natalie B. Brill are residents of Pleasant Valley, Dutchess County, New York. They were the owners of real property located in Dutchess County, New York, which was sold by the County of Dutchess as property previously acquired by it at tax sale.

7. Plaintiff Geneva Cecil is a resident of Millerton, Dutchess County, New York. She was the owner of a certain parcel of improved real property located in Dutchess County, New York, which was sold by the County of Dutchess as property previously acquired by it at tax sale.

8. Plaintiffs James MacGilfrey and Yvonne MacGilfrey are residents of Troy, Rensselaer County, New York. They were the owners of a certain parcel of improved real property located in Rensselaer County, New York, which was sold by the County of Rensselaer as property previously acquired by it at tax sale.

9. Plaintiff Leanda Burgess is a resident of Cocoa, Florida. He was the owner of a certain parcel of real property located in Broome County, New York, which was sold by the County of Broome as property previously acquired by it at tax sale.

10. Defendants Sullivan County, Orange County, Dutchess County, Rensselaer County and Broome County are duly constituted political subdivisions of the State of New York.

11. Defendant Daniel L. Briggs is the County Treasurer of the County of Sullivan and is chargeable with enforcing the provisions of the Real Property Tax Law applicable to the County of Sullivan.

12. Defendant John S. Keller is the Commissioner of Finance of the County of Orange and is chargeable with enforcing the provisions of the Real Property Tax Law applicable to the County of Orange.

13. Defendant M. Philip Amodeo is the Commissioner of Finance of the County of Dutchess and is charageable with enforcing the provisions of the Real Property Tax Law applicable to the County of Dutchess.

14. Defendant William St. John is the Chief Fiscal Officer of the County of Rensselaer and is charageable with enforcing the provisions of the Real Property Tax Law applicable to the County of Rensselaer.

15. Defendant Brian Lind is the Commissioner of Finance of the County of Broome and is chargeable with enforcing the provisions of the Real Property Tax Law applicable to the County of Broome.

16. Defendant State of New York is made a party to this action solely because the constitutionality of one of its statutes is being challenged in this action.

II. CLASS ACTION ALLEGATIONS, PLAINTIFF CLASS

17. The named plaintiffs bring this action on their own behalf and, pursuant to Article 9 of the CPLR on behalf of all other persons similarly situated for damages, injunctive and declaratory relief, and relief incident and subordinate thereto, including costs and attorneys' fees. The members of the class similarly situated are all individuals who own or have owned real property in the State of New York and whose property has been or is subject to being sold pursuant to Real Property Tax Law section 1008(3) and 1018. Plaintiffs also bring this action on behalf of the sub-classes of the class consisting of class members who own or have owned property in Sullivan County, Orange County, Dutchess County, Rensselaer County or Broome County. The requirements of CPLR 901 are met in that: (a) While the exact number of

members of the class and subclasses are not known, it is estimated that there are not less than 15,000 members: the class and sub-classes are so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the class and sub-classes concerning the validity and constitutionality of particular sections of the Real Property Tax Law and the injunctive and declaratory relief is common to the entire class; (c) the claims of the representative parties are typical of the claims and there is no conflict as between any individual named plaintiffs and other members of the class; and (d) the representative parties will fairly and adequately protect the interests of the class and sub-classes; and (e) the parties opposing the class and sub-classes have acted on grounds generally applicable to the class and sub-classes, thereby making appropriate final injunctive and declaratory relief with respect to the class and the sub-classes as a whole.

III. CLASS ACTION ALLEGATION, DEFENDANT CLASS

18. The named County and individual defendants are being sued in this action on their own behalf and, pursuant to Article 9 of the CPLR, on behalf of all other persons similarly situated. The members of the class similarly situated are all Counties, all Commissioners of Finance, all County Chief Fiscal Officers and all County Treasurers in New York State which have or may elect the procedures for tax sales set forth in New York Real Property Tax Law Section 1008(3) and 1018. The requirements of Section 901 are met in that: (a) the class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the class; (c) the defenses of the representative parties are typical of the defenses of that class and (d) the representative parties will fairly and adequately protect the interests of the class; and (e) the questions of law common to the members

of the class predominate over any questions affecting individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

IV. ALLEGATIONS

A. SULLIVAN COUNTY

(1). Mackechnie

19. Plaintiff, MacKechnie was the owner in fee of a certain parcel of land containing 94 + acres of land in Sullivan County designated as 21-1-16 on the Tax Map of the Town of Lumberland.

20. Plaintiff MacKechnie did not have sufficient funds to pay his real property taxes.

21. In July, 1977, the County of Sullivan purchased without competitive bidding the tax sale certificate for the full amount of the taxes owed.

22. Plaintiff MacKechnie could not afford to redeem the property. Thus, on or about October 2, 1980 the County of Sullivan, deeded the property to itself.

23. Thereafter, by deed dated December 9, 1980 and filed in the Sullivan County Clerk's Office in Liber 986 of deeds at page 162, the County of Sullivan sold the aforesaid property for $20,300.00.

24. The County of Sullivan did not pay plaintiff, MacKechnie the fair market value of the aforesaid parcel of land nor did it give him the difference between the $2,962.12 taxes, penalties, interest and costs owed and the $20,300.00 realized on the sale of the aforesaid property.

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25. Upon information and belief, the fair market value of the aforesaid property was $30,000.00.

26. By reason of the foregoing, plaintiff MacKechnie has sustained damages in the amount of $27,037.88.

(2). Stidolph and Dileilla

27. Plaintiffs Maria Monoki Stidolph and Catherine Monoki Dileilla were the owners in fee of three parcels of land containing 10+ acres of land in Sullivan county designated as 15-1-12 on the Tax Map of the Town of Rockland; #5-10-6 and 6-3-3 on the Tax Map of the Town of Lumberland.

28. Plaintiffs Maria Monoki Stidolph and Catherine Monoki Dileilla did not have sufficient funds to pay their real property taxes.

29. On or about July 20, 1979, the County of Sullivan purchased without competitive bidding the tax sales certificate for the full amount of the taxes owed.

30. Plaintiffs Maria Monoki Stidolph and Catherine Monoki Dileilla could not afford to redeem the property. Thus, in or about October, 1982 the County of Sullivan, deeded the property to itself.

31. Thereafter, on or about October 15, 1982, the County of Sullivan sold the property in the Town of Rockland for $2,500.00.

32. The County of Sullivan did not pay plaintiffs Maria Monoki Stidolph and Catherine Monoki Dileilla the fair market value of the aforesaid parcel of land nor did it give them the difference between the $513.29 taxes, penalties, interest and costs owed and the $2,500.00 realized on the sale of the aforesaid property.

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33. The County did not sell the other two parcels but still retains them and has refused to allow plaintiffs to redeem the property.

34. Upon information and belief, the fair market value of the aforesaid property was $9,000.00.

35. By reason of the foregoing, plaintiffs Maria Monoki Stidolph and Catherine Monoki Dileilla have sustained damages in the amount of $9,000.00 less the taxes owed.

B. ORANGE COUNTY

(1). Williams

36. Plaintiff Williams was the owner in fee of a certain parcel of land containing a total of 2+ acres of land and a trailer in Orange County designated as 7-1-20.1 on the Tax Map of the Town of Deerpark, Orange County.

37. Plaintiff Williams did not have sufficient funds to pay his real property taxes.

38. In or about March, 1979, the County of Orange purchased without competitive bidding the tax sales certificate for the parcel for the full amount of the taxes owed.

39. Plaintiff Williams could not afford to redeem the property. Thus, on or about September 9, 1982, the County of Orange, deeded the property to itself.

40. Thereafter, on or about September 9, 1982, the County of Orange sold the aforesaid property for $4,500.00.

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41. The County of Orange did not pay plaintiff, Williams the fair market value of the aforesaid parcel of land nor did it give him the difference between the $2,762.83 taxes, penalties, costs and interest owed and the $4,500.00 realized on the sale of the aforesaid property.

42. Upon information and belief, the fair market value of the aforesaid property was $15,000.00.

43. By reason of the foregoing, plaintiff Williams has sustained damages in the amount of $15,000.00, less the taxes owed.

(2). *Maleszka*

44. Plaintiff Maleszka was the owner in fee of two parcels of land containing a total of 14+ acres and a house in Orange County designated as 12-1-40.25 and 12-1-40.23 on the Tax Map of the Town of Greenville, Orange County.

45. Plaintiff Maleszka did not have sufficient funds to pay his real property taxes.

46. On or about March 22, 1979, the County of Orange purchased without competitive bidding the tax sales certificate for both parcels for the full amount of the taxes owed.

47. Plaintiff Maleszka could not afford to redeem the property. Thus, on or about September 2, 1982 the County of Orange, deeded the properties to itself.

48. Thereafter, on September 9, 1982, the County of Orange sold at auction the aforesaid property 12-1-40.25 for $22,000.00.

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49. The County did not sell parcel 12-1-40.23, but still retains title thereto and has told plaintiff that he can purchase it from the County for $7,000.00.

50. The County of Orange did not pay plaintiff Maleszka the fair market value of the aforesaid parcels of land nor did it give him the difference between the $5,141.02 taxes, interest, penalties and costs owed and $22,000.00 the amount realized on the sale of the aforesaid property.

51. Upon information and belief, the fair market value of the aforesaid properties was $39,000.00.

52. By reasons of the foregoing, plaintiff Maleszka has sustained damages in the amount of $39,000.00, less the taxes, interest, penalties and costs owed.

(3). *Jones*

53. Plaintiffs Amy and Charles Jones were the owners in fee of a parcel of land in Orange County designated as 77-7-19 on the Tax Map of the Town of Wallkill, Orange County.

54. Amy and Charles Jones did not have sufficient funds to pay their real property taxes.

55. On or about March 21, 1978, the County of Orange without competitive bidding purchased the tax sales certificate for the parcel for the full amount of the taxes owed.

56. Plaintiffs could not afford to redeem the property. Thus, on or about September 16, 1981 the County of Orange, deeded the property to itself.

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57. Thereafter, on March 1, 1983, the County of Orange sold at auction the aforesaid property for $1,300.00.

58. The County of Orange did not pay Amy and Charles Jones the fair market value of the aforesaid parcel of land nor did it give them the difference between the $1,002.34 taxes, interest, penalties and costs owed and $1,300.00, the amount realized on the sale of the aforesaid property.

59. Upon information and belief, the fair market value of the aforesaid property was $6,000.00 at the time that it was deeded to the County on September 16, 1981.

60. By reason of the foregoing, plaintiffs Jones have sustained damages in the amount of $6,000.00, less the taxes, interest, penalties and costs owed.

C. DUTCHESS COUNTY

(1). *Brill*

61. Plaintiffs Harry Brill and Natalie Brill were the owners in fee of a certain parcel of land containing a total of 7 acres of land and a house in Dutchess County designated as grid #08-6462-04-580461-00, Town of LaGrange, Dutchess County.

62. Plaintiffs Harry Brill and Natalie Brill did not have sufficient funds to pay the real property taxes.

63. On or about January 7, 1977, the County of Dutchess purchased without competitive bidding the tax sales certificate for $1,223.00 the full amount of the taxes for 1975 owed. The County again purchased the tax sale certificate on January 6, 1978

for $1,139.14 for the 1976 taxes owed; on January 5, 1979 for $431.09 for the 1977 taxes owed; and on January 7, 1980 for $1,167.84 for the 1978 taxes owed.

64. Plaintiffs Harry and Natalie Brill could not afford to redeem their property. Thus, on or about March 12, 1980, the County of Dutchess, deeded the property to itself.

65. Thereafter, on or about September 10, 1980, the County of Dutchess sold the aforesaid property for $20,500.00.

66. The County of Dutchess did not pay plaintiffs, Harry and Natalie Brill the fair market value of the aforesaid parcel of land nor did it give him the difference between the $5,134.52, the total taxes, penalties, interest and costs owed and the $20,500.00, the amount realized on the sale of the aforesaid property.

67. Upon information and belief, the fair market value of the aforesaid property was $30,000.00.

68. By reason of the foregoing, plaintiffs Harry Brill and Natalie Brill have sustained damages in the amount of $24,865.48.

(2). *Cecil*

69. Plaintiff Cecil was the owner in fee of a certain parcel of land in Dutchess County designated as Grid No. 10-7271-09-082658-00 in the Town of North East.

70. Plaintiff Cecil did not have sufficient funds to pay her real property taxes.

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71. In January 1978, the County of Dutchess without competitive bidding purchased the tax sale certificate upon plaintiff Cecil's property for the full amount of the taxes owed.

72. Plaintiff Cecil could not afford to redeem the property. Thus, on or about March 2, 1981 the County of Dutchess, deeded the property to itself.

73. Thereafter, by deed dated September 17, 1981 and filed in the Dutchess County Clerk's Office in Liber 1566 of deeds at page 278, the County of Dutchess sold the aforesaid property for $6,000.

74. The County of Dutchess did not pay plaintiff, Cecil the fair market value of the aforesaid parcel of land nor did it give her the difference between the $2,496.32 taxes, penalties, interest and costs owed and the $6,000 realized on the sale of the aforesaid property.

75. Upon information and belief, the fair market value of the aforesaid property was $20,000.00.

76. By reason of the foregoing, plaintiff Cecil has sustained damages in the amount of $17,503.68.

D. RENSSELAER COUNTY

(1). *MacGilfrey*

77. Plaintiffs James Mac Gilfrey and Yvonne Mac Gilfrey were the owners in fee of a certain parcel of land containing .22 acres of land in Rensselaer County designated as section 135.13 block 3, lot 1 on the Tax Map of the Town of North Greenbush.

78. Plaintiffs James Mac Gilfrey and Yvonne Mac Gilfrey did not have sufficient funds to pay their real property taxes.

79. In each of the years 1978 to 1981, the County of Rensselaer purchased without competitive bidding the tax sales certificate for the full amount of the taxes owed in each of the years.

80. Plaintiffs James Mac Gilfrey and Yvonne Mac Gilfrey could not afford to redeem the property. Thus, on or about May or June 1982 the County of Rensselaer deeded the property to itself.

81. Thereafter, by deed dated June 4, 1982 and filed in the Rensselaer County Clerk's Office, the County of Rensselaer sold the aforesaid property for $2,900.00.

82. The County of Rensselaer did not pay plaintiffs James Mac Gilfrey and Yvonne Mac Gilfrey the fair market value of the aforesaid parcel of land nor did it give them the difference between the $1,620.33 taxes, penalties, interest and costs owed and the $2,900.00 realized on the sale of the aforementioned property.

83. Upon information and belief, the fair market value of the aforesaid property was $10,000.00.

84. By reason of the foregoing, plaintiff James Mac Gilfrey and Yvonne Mac Gilfrey have sustained damages in the amount of $8,379.67.

E. BROOME COUNTY

(1). *Burgess*

85. Plaintiff Leanda Burgess was the owner in fee of a certain parcel of land containing approximately 4.88 acres of land in

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Broome County designated as 11-13S-14 on the Tax Map of the Town of Windsor.

86. Plaintiff Burgess did not have sufficent funds to pay his real property taxes.

87. In October of 1979, 1980, and 1981, the County of Broome purchased without competitive bidding the tax sale certificate for the full amount of the taxes owed.

88. Plaintiff Burgess could not afford to redeem the property. Thus, in or about April, 1983 the County of Broome, deeded the property to itself.

89. Thereafter, by deed dated April, 1983 and filed in the Broome County Clerk's Office, the County of Broome sold the aforesaid property for $3,400.00 to SKS Vacation Retreats Inc.

90. The County of Broome did not pay plaintiff Burgess the fair market value of the aforesaid parcel of land nor did it give him the difference between the $2,228.79 taxes, penalties, interest and costs owed and the $3,400.00 realized on the sale of the aforesaid property.

91. Upon said information and belief, the fair market value of the aforesaid property was $10,000.00.

92. By reason of the foregoing, plaintiff Burgess has sustained damages in the amount of $7,771.21.

F. ALL PARTIES

93. The actions of the respective defendants set forth above were taken pursuant to Section 1008(3) and 1018 of the Real Property

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Tax Law of the State of New York as opted for by county legislation.

94. Sections 1008(3) and 1018 of the Real Property Tax Law of the State of New York do not afford plaintiffs due process of law in that no procedure is provided for assessing the value of the land which is taken by the counties to satisfy the Real Property Tax liens and that there is no notice, or insufficient notice, of the procedures to be followed including the lack of competitive bidding and that the taking of land in excess of the amount of taxes owed is a taking of property without just compensation.

95. Plaintiffs have no adequate remedy at law and defendants will continue to cause plaintiffs and the class members irreparable harm unless enjoined by the Court.

96. The actions complained of and the law challenged herein (Section 1008(3) and 1018 of the Real Property Tax Law of New York) violate the rights of the plaintiffs provided for and guaranteed by the Civil Rights Act of 1871 (42 U.S.C. section 1983), the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Sections 6 and 7 of Article 1 of the Constitution of the State of New York:

> a. Sections 1008(3) and 1018 of the Real Property Tax Law of New York, pursuant to which the Defendant parties purported to act against the Plaintiffs, are unconstitutional and violate the Plaintiffs' rights because they do not comport with the procedural due process requirements of the Fourteenth Amendment to the United States Constitution or of the Constitution of the State of New York and because they effectuate a taking of property without just compensation.

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WHEREFORE, Plaintiffs on behalf of themselves and on behalf of all other persons similarly situated, demand judgment:

1. Determining that this action be maintained as a class action for both a plaintiff class and a defendant class.

2. Declaring Sections 1008(3) and 1018 of the Real Property Tax Law of New York to be illegal, unconstitutional and void in that they are violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Constitution of the State of New York.

3. Declaring Sections 1008(3) and 1018 of the Real Property Tax Law of New York to be illegal, unconstitutional and void in that they effectuate a taking of property without just compensation in violation of the Fourteenth Amendment to the United States Constitution and the Constitution of the State of New York.

4. Declaring plaintiffs rights under 42 USC 1983 have been violated

5. Enjoining the defendants and the members of the defendant class from employing Sections 1008(3) and 1018 of the Real Property Tax Law of New York to deprive plaintiffs and the members of the plaintiff class of their property without just compensation and without due process procedures.

6. Entering an order requiring the named defendants and the members of the defendant class to pay to plaintiffs and all those similarly situated, the fair market value of the individual's property taken by the defendants and the members of the defendant class pursuant to Sections 1008(3) and 1018 of the Real Property Tax Law less the amount of taxes owed by the land owner and giving plaintiffs and the members of the class judgment therefor.

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7. Awarding to each plaintiff and all persons similarly situated, the excess money received upon the sale of their property and against the county in which said property was located and entering judgment therefor.

8. Enter an order declaring that where title is still in the name of the county, the deeds acquired by such county pursuant to Real Property Tax Law Section 1008(3) and 1018 are null and void.

9. Enter an order directing that plaintiffs or anyone similarly situated can redeem their property if title thereto is still in the name of the county in which the property is located.

10. Enjoining each of the defendants from transferring encumbering or disposing of any real property acquired by it pursuant to Real Property Tax Law Section 1008(3) and 1018.

11. Awarding to the plaintiffs, WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY AND LEANDA BURGESS and all other members of the class the sum of $15,000.00 each for damages attendant to the injury resulting to each of them from the denial of their constitutional guaranteed rights to procedural due process and the taking of property without just compensation.

12. Award to plaintiff, Wallace MacKechnie the sum of $30,000.00 as the just compensation for the taking of his property.

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13. Award to plaintiffs, Maria Monoki Stidolph and Catherine Monoki Dileilla, the sum of $9,000.00 as the just compensation for the taking of their property.

14. Award to plaintiff, George H. Williams, the sum of $15,000.00 as the just compensation for the taking of his property.

15. Award to plaintiff Chester Maleszka, the sum of $39,000.00 as the just compensation for the taking of his property.

16. Award to plaintiffs, Amy and Charles Jones the sum of $6,000.00 as the just compensation for the taking of their property.

17. Award to plaintiffs, Harry W. Brill, Jr. and Natalie Brill, the sum of $30,000.00 as the just compensation for the taking of their property.

18. Award to plaintiff, Geneva Cecil the sum of $20,000.00 as the just compensation for the taking of her property.

19. Award to plaintiffs, James Mac Gilfrey and Yvonne Mac Gilfrey the sum of $8,379.67 as the just compensation for the taking of their property.

20. Award to plaintiff, Leanda Burgess the sum of $10,000.00 as the just compensation for the taking of his property.

21. Award plaintiffs their costs herein and also grant them reasonable attorneys' fees.

22. Grant the plaintiffs and all other persons similarly situated such other and further relief as this court deems just, equitable,

and proper; and retain jurisdiction over this matter to enforce all orders entered herein.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1897

IN THE

Supreme Court of the United States

October Term, 1985

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS,

Petitioners,

against

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN, as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

Respondents.

Brief for all Respondents Except State of New York

JAMES G. SWEENEY
County Attorney, Attorney for all Respondents Except State of New York
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Question Presented.

Under the Due Process provisions of the Fourteenth Amendment, may a taxing authority convey land, previously conveyed to it without competitive bidding because of tax delinquencies thereon, for a sum in excess of the delinquencies and retain the entire proceeds of the sale?

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No. 85-1897

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985.

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS,

Petitioners,

vs.

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,.

Respondents.

Brief of all Respondents Except the State of New York.

Statement of the Case.

The tax delinquent lands of petitioners (i.e., Mac Kechnie) were conveyed without public bidding to the taxing agencies (i.e., Orange County, N.Y.) at a "tax sale" after a three-year redemption period expired, and thereafter, upon notice to the petitioners, were reconveyed to third parties for sums in excess of the amount of the delinquencies.

Petitioners admit notice of the assessment; an opportunity to "grieve" (or complain of) the assessment; notice of the resulting tax levy; notice of the tax delinquencies; notice of the impending expiration of the three-year redemption period, and notice of the impending resale to third parties by the counties.

There was never a "taking"* of any property by the counties only a conveyance to them in exchange for the amount of the delinquent tax and a subsequent resale by them to third parties.

Reason for Denying the Petition.

Petitioners admit there was no infirmity in the notice provisions of the New York Statutory scheme (cf. *Botens v. Aronauer,* 32 N.Y.2d 243, appeal dismissed 414 U.S. 1059).

Petitioners focus only upon the retention by the counties of the entire proceeds of a resale by them to third parties for sums in excess of the delinquency (after a con-

*A "just compensation" concept aptly distinguished from a case such as that at bar in *Balthazar v. Mari Ltd.,* 301 F.Supp. 103, affirmed by this Court at 396 U.S. 114 [ft. nt. 6].

veyance to them in exchange for the amount of the delinquency). Petitioners imply that the Fourteenth Amendment requires a public bidding process for their former lands prior to a "tax sale" to the counties and a return to them of the sum received by the counties in excess of the delinquency after they sold the properties to third parties.

This issue has been decisively settled by this Court against the petitioners' position on several occasions and there is now no need for further review. See *Balthzar v. Mari Ltd.,* 301 F.Supp. 103, aff'd 396 U.S. 114 (1969); *Nelson v. City of New York,* 352 U.S. 103 (1956), and *Chapman v. Zobeline,* 237 U.S. 135 (1915). This issue, squarely decided by this Court on at least three occasions, is not one of general importance now wanting of settlement by this Court. Nor, contrary to the petitioners' assertions, is there any conflict between either the Courts of Appeals on this issue or between this Court and the Courts of Appeals or the highest Court of any state. The petitioners' attempt to construct such is contrived at best. The counties' actions in safeguarding their interest in this case are not outside constitutional obligations.

The petitioners' reliance upon *United States v. Lawton,* 110 U.S. 146 (1884), is inappropriate. There, as noted by this Court in *Nelson,* and by the New York Court of Appeals below, the case turned on a statute that explicitly required the return of surplus received at a tax sale to the delinquent taxpayer. No such statute is at hand and the *Lawton* case, as noted by Chief Justice Warren "is without constitutional overtones."

There is no compelling reason in this case to grant the writ under the guidelines set forth in Rule 17(a) or (b) of this Court.

CONCLUSION.

The petition should be dismissed.

Dated: May 29, 1986

Respectfully submitted,

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(3)

No. 85-1897

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IN THE

Supreme Court of the United States

October Term, 1985

WALLACE MAC KECHNIE, MARIE MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS individually, and on behalf of all other persons similarly situated,

Petitioners,

against

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN, as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME, BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

Respondents.

ON CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

Brief in Opposition of Respondent State of New York

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MICHAEL S. BUSKUS
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Of Counsel

Dated: June 12, 1986

Question Presented

Whether certiorari is warranted based upon a claimed conflict of Supreme Court decisions when, in reality, this Court has consistently upheld, as against due process challenges, tax foreclosure statutes which worked a total forfeiture *if* delinquent taxpayers fail to avail themselves of lengthy periods of redemption when those taxpayers indisputably received notice and an opportunity to be heard on the underlying tax obligations.

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No. 85-1897

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985.

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS,

Petitioners,

vs.

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

Respondents.

ON CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Brief in Opposition of Respondent State of New York

Facts

The undisputed facts, as found by the court below, are as follows. Each petitioner received notice by mail of their real property tax obligation. App 6a. Each petitioner failed to pay the taxes due. App 6a. Proper advance notice of an impending tax sale was given. App 6a. The respondent counties purchased the properties at tax sales without competitive bidding. App 6a. Petitioners were permitted to redeem their properties during a three-year period. App 6a. Within six months of the expiration of the redemption period, each petitioner received notice by mail of the upcoming expiration. App 6a. None of the petitioners redeemed. App 6a. The respondent counties thereafter took deeds to the properties. App 6a. The counties sold most of the properties at public auctions and retained the proceeds in excess of taxes and penalties due. App 6a.

Argument

The writ of certiorari should be denied. There is no actual conflict of decisional authority. Petitioners simply misread the cases in a strained attempt to claim conflicting precedents.

United States v. Lawton, 110 US 146 (1884), upon which petitioners principally rely, was not a constitutional decision, but one of statutory construction. *Lawton* held that federal statutes required refund of any surplus value. *Id.* at 149. Obviously, the statute may have been unconstitutionally applied if that taxpayer was deprived of his statutory entitlement. Thus, the language of *Lawton* (p 150) quoted by petitioners (Pet Br, p 6) does not establish any constitutional right to refund of excess value after a tax sale.

Nelson v. City of New York, 352 US 103 (1956), not only upheld a tax forfeiture statute as constitutional, but even distinguished *Lawton* as only a statutory construction decision (*see* 352 US at 110). *Nelson* also cited with approval (*see* 352 US at 110 & n 9) *Chapman v. Zobelein,* 237 US 135 (1915), which squarely holds that once an owner is given a right of hearing on the original assessment, no violation of due process occurs if property worth far in excess of the assessment is later forfeited.

Thus, there is no conflict whatsoever between those decisions and *Balthazar v. Mari Ltd.,* 301 F Supp 103 (ND Ill), *affd,* 396 US 114 (1969). Such tax statutes have uniformly been upheld as constitutional. *See also, Turner v. New York,* 168 US 90, 94 (1897) (two-year redemption period was valid as a mere statute of limitations); *Leigh v. Green,* 193 US 79, 87-89 (1904) (summary foreclosure permissible upon expiration of redemption period). Here, there is a three-year redemption period.

Nor is *Mennonite Board of Missions v. Adams,* 462 US 791 (1983), to the contrary. *Mennonite* held that mere notice by publication affronts due process when a mortgagee receives no notice of a pending tax sale until *after* the redemption period had expired. *Id.* at 794-797. That holding does not assist petitioners. Nothing in *Mennonite* altered the well settled substantive consequences which attend a failure timely to exercise a right of redemption once adequate notice of a tax sale has been received.

Furthermore, this Court has recently upheld statutes by which all property rights were forfeited if not timely asserted. *Texaco, Inc. v. Short,* 454 US 516, 520, 524-525 (1982); *United States v. Locke,* ____ US ____, 105 S Ct 1785, 1797-1798 (1985).

Petitioners have failed to demonstrate any conflict of decisions. The law is well settled that statutes affording advance notice of tax obligations, an opportunity to be heard *and* lengthy periods of redemption are constitutional. The statute challenged here satisfies each of those criteria.

CONCLUSION

The writ should be denied.

Dated: Albany, New York
June 12, 1986

Respectfully submitted,

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